

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a  
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

ELB ELECTRONICS, INC.

Defendants.

C.A. No. 15-056-RGA

**FILED UNDER SEAL**

---

**JOINT STATUS REPORT**

---

Pursuant to the Court’s October 21, 2020 Order (D.I. 167), Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird”) and Defendant ELB Electronics, Inc. (“ELB”) jointly submit this status report regarding necessary trial logistics that result from COVID-19 concerns as follows:

1. **Possible Live Witnesses** (name, origin (approximate), any concerns regarding live testimony of which the Parties are aware):

**Name:** Bretschneider, Eric

**Origin:** Texas

**Concerns:** Family member undergoing chemotherapy; risk of travel; risk of high incidence of COVID at origin

**Name:** Hall, Dawn

**Origin:** New Jersey

**Concerns:** Restrictions on return travel

**Name:** Harris, Daniel

**Origin:** Massachusetts

**Concerns:** Restrictions on return travel; risk of travel

**Name:** He, Ping

**Origin:** California

**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Hess, Norman

**Origin:** Utah/Arizona

**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Jin, Sheng

**Origin:** California

**Concerns:** Risk of travel; risk of high incidence of COVID at origin

**Name:** Koomson, Valencia  
**Origin:** Massachusetts  
**Concerns:** Restrictions on return travel;  
risk of travel

**Name:** Wacek, Joel  
**Origin:** Massachusetts  
**Concerns:** Restrictions on return travel;  
risk of travel

**Name:** Stacy, Brian  
**Origin:** New York/New Jersey/Florida  
**Concerns:** Restrictions on return travel;  
risk of travel; risk of high incidence of  
COVID at origin

Three of Blackbird's witnesses and two of its trial counsel live in Massachusetts, and another trial counsel lives in Chicago, both of which implement restrictions upon return from most states, including Delaware.<sup>1, 2</sup> Another witness lives in New York, which has similar restrictions on returning residents.<sup>3</sup> ELB's possible live witnesses live in California, Texas, and New Jersey. ELB's non-Delaware trial counsel live in New York and New Jersey. Massachusetts, New York, and Chicago require that returning residents quarantine for 14 days and New Jersey has an advisory 14 day quarantine on return travel to the state<sup>4</sup> which would require these witnesses and counsel to remain physically separate from their families and otherwise refrain from leaving their residences during a time that will include the holidays.

Moreover, witnesses will be travelling from California, Texas, and Florida, which are in the top 5 states by number of COVID infections within the last 7 days,<sup>5</sup> while Utah is in the top 10 states by infection per capita.<sup>6</sup>

---

<sup>1</sup> See <https://www.mass.gov/info-details/covid-19-travel-order>

<sup>2</sup> <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>

<sup>3</sup> See [https://coronavirus.health.ny.gov/system/files/documents/2020/06/interimguidance\\_traveladvisory.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/06/interimguidance_traveladvisory.pdf)

<sup>4</sup> See <https://covid19.nj.gov/faqs/nj-information/travel-and-transportation/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey#:~:text=New%20Jersey%20welcomes%20travel%20to,days%20after%20leaving%20that%20state>

<sup>5</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesinlast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days) (last accessed Oct. 26, 2020)

<sup>6</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last accessed Oct. 26, 2020)

*ELB's position:* In light of these health risks, as well as the challenges of empaneling a representative jury during these times, ELB respectfully requests that the trial be postponed until a time when it can be safely held in person.

2. **Anticipated Trial Hours** (opening statements and testimony only):

*Blackbird's Position:* Blackbird anticipates requiring 18 hours to present its case, assuming live witness testimony.

*ELB's Position:* ELB anticipates requiring 15 hours to present its case, assuming live witness testimony.

3. **Minimum Number of Attorneys Needed to Appear in Front of the Jury:**

*Blackbird's Position:* Blackbird expects that it will require no fewer than five attorneys (including one Delaware counsel), a corporate representative, and “hot seat” operator to be present in the courtroom during trial.

*ELB's Position:* ELB expects that it will require no fewer than three attorneys (including one Delaware counsel), a corporate representative, and “hot seat” operator to be present in the courtroom during trial.

4. **The Parties' Thoughts on Live, Remote, and Mixed Testimony:**

*Blackbird's Position:* Blackbird requests that all witnesses will testify live.

*ELB's Position:* ELB requests that all witnesses testify remotely. ELB does not believe that any witness should be forced to travel and face the risk of becoming infected particularly in light of the recent dramatic increase in COVID-19 infections, that the safest course for all concerned is to limit in person contact during trial, and that it could be prejudicial to have some witnesses testifying live and other witnesses testifying remotely.

5. **Additional Concerns:**

***Possible Consolidation of the ELB and Feit Electric Trials***

Blackbird's Position: *Blackbird requests consolidation.* The issues before the Court in the instant action have significant overlap with those in the Feit Electric Action (C.A. No. 15-058-RGA), currently scheduled for trial on January 11, 2021. The validity issues are identical and presented by both ELB and Feit in a single expert report by a single expert. There is also significant overlap in infringement and damages issues, [REDACTED]

[REDACTED]

Judicial efficiency and collateral estoppel counsel against addressing these issues in separate trials. Blackbird does not believe the time to present a consolidated case would be meaningfully longer than to present each individual case.

*Blackbird requests that a consolidated trial take place during the time period currently scheduled for the Feit Electric trial, beginning on January 11, 2021.* The situation with COVID is not likely to improve before the trial scheduled for ELB, beginning on December 7, 2020. Indeed, the number of COVID cases nationally has nearly doubled in roughly the month between September 15, 2020 (34,305 new cases) and October 21, 2020 (63,656 new cases),<sup>7</sup> and on October 21, 2020 the Centers for Disease Control updated its guidance regarding what constitutes “close contact” with a COVID-positive individual to include spending 15 minutes or more within 6 feet of that individual within 24 hours.<sup>8,9</sup>

ELB's Position: ELB and Feit Electric have discussed the matter and do not agree to consolidation. Blackbird's claims for relief do not extend jointly and severally with regard to all

---

<sup>7</sup> [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases)

<sup>8</sup> <https://www.washingtonpost.com/health/2020/10/21/coronavirus-close-contact-cdc/>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact>

products at issue for ELB and all products at issue for Feit Electric. Thus, joinder is not proper. *See* 35 U.S.C. § 299(a)(1). In addition, consolidating the trials would require the participation of additional witnesses and corporate representatives thereby increasing the number of people in court resulting in an increased risk of COVID-19 infections and the time required to present the case.

Dated: October 26, 2020

OF COUNSEL:

Wendy Verlander  
wverlander@blackbird-tech.com  
Jeffrey Ahdoot  
jahdoot@blackbird-tech.com  
Matthew C. Berntsen  
mberntsen@blackbird-tech.com  
Blackbird Tech LLC d/b/a  
Blackbird Technologies  
One Boston Place, Suite 2600  
Boston, MA 02108  
617.307.7100

David A. Gerasimow  
gerasimow@gerasimowlaw.com  
The Law Offices of  
David A. Gerasimow, P.C.  
73 W. Monroe St.  
Chicago, IL 60603  
312.919.4254

OF COUNSEL:

John M. Hintz  
MAYNARD, COOPER & GALE, P.C.  
551 Fifth Avenue, Suite 2000  
New York, NY 10176  
(646) 609-9280  
jhintz@maynardcooper.com

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis  
Stamatios Stamoulis #4606  
stamoulis@swdelaw.com  
Richard C. Weinblatt #5080  
weinblatt@swdelaw.com  
800 N. West Street, Thrid Floor  
Wilmington, DE 19801  
Telephone: (302) 999-1540

*Attorneys for Plaintiff*  
Blackbird Tech LLC d/b/a  
Blackbird Technologies

/s/ Karen Jacobs  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
Karen Jacobs (#2881)  
Michael J. Flynn (#5333)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
kjacobs@mnat.com  
mflynn@mnat.com

*Attorneys for Defendant ELB Electronics, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served via email upon all counsel of record via  
Email on October 26, 2020.

/s/ Stamatios Stamoulis  
Stamatios Stamoulis